

**National Security (Legislative Provisions) Bill:
Chinese nationality and HKSAR permanent residency status**

Supplementary Notes

Introduction

This notes provides further information in relation to the paper “Chinese nationality and HKSAR permanent residency status” issued on 17 April 2003 (Paper No. 25), in response to the questions raised during the meeting of the Bills Committee on 17 May 2003.

NPCSC's Explanation in May 1996

2. According to Article 67(4) of the Constitution of the People's Republic of China (PRC), the Standing Committee of the National People's Congress (NPCSC) exercises the functions and powers to interpret the statutes of the PRC. The NPCSC adopted in May 1996 the "Explanations of Some Questions by the Standing Committee of the National People's Congress concerning the Implementation of the Nationality Law of the People's Republic of China in the HKSAR" (“Explanations”) in accordance with the circumstances of Hong Kong. In consequence, the Nationality Law of the PRC, as implemented in the HKSAR, has to be interpreted in accordance with the Explanations.

3. As explained in Paper No. 25, a person satisfying the criteria of Paragraph 1 of the Explanations is a Chinese national. Consequently, his Chinese nationality would be lost only if his declaration of change of nationality made in accordance with Paragraph 5 of the Explanations has been approved by the Director of Immigration, or his application for renunciation of Chinese nationality made in accordance with Article 11 of the Nationality Law has been approved by the Director of Immigration.

4. The above understanding has been affirmed by the case of *Tse Yiu Hon Patrick v. HKSAR Passports Appeal Board* [2002] 3 HKC, as provided during the above meeting (Paper No. 45).

Legal basis for loss of permanent residency status

5. The circumstances under which the HKSAR permanent residency status would be lost has been summarized in paragraph 11 of Paper No. 25. The legal basis is the Immigration Ordinance (Cap. 115). Paragraph 2 of Schedule 1 to the Immigration Ordinance provides that a person who is within categories (a) to (f) of that Paragraph is a permanent resident of the HKSAR. Categories (a) to (c) require the person concerned to be a Chinese citizen, as defined under Paragraph 1 of the Schedule. Where a change of nationality affects the person's

status of Chinese citizen, his HKSAR permanent residency status as defined in Paragraph 2 of the Schedule will be affected as explained.

6. Regarding categories (d) to (f) of Paragraph 2, Paragraph 7 of the Schedule sets out the circumstances where the HKSAR permanent residency status would be lost. The paragraph provides that the status would be lost only if-

- (a) being a person falling within the category in paragraph 2(d) or (e), the person has been absent from Hong Kong for a continuous period of not less than 36 months since he ceased to have ordinarily resided in Hong Kong; or
- (b) being a person falling within the category in paragraph 2(f), the person has been absent from Hong Kong for a continuous period of not less than 36 months after he obtained the right of abode in any place other than Hong Kong and has ceased to have ordinarily resided in Hong Kong.

Security Bureau
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